IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 4 of 1995
and
Gift Tax References Nos. 5 and 6 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF GIFT TAX

Versus

RAMESHCHANDRA RAVJIBHAI

Appearance:
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 29/01/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

All these references involve the following common question of law which has been referred to us for our

opinion in respect of the assessment years 1979-80 and 1980-81:

"Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that on reconstitution of partnership firm where the existing partner surrendered a portion of his share and the incoming partner brought in capital, the transaction did not amount to gift?"

2. We have heard Mr. Manish R. Bhatt, learned Standing Counsel for the revenue. Though served, none appears on behalf of the respondent - assessee.

3. The brief facts are that the firm M/s. Patel Brass Works, Rajkot was constituted with the following partners as per partnership deed dated 4.11.1975:

1. Shri Ravjibhai Chhaganlal 45%
2. Shri Gandalal Bavalal 20%
3. Shri Rameshchandra Harjibhai 35%.

There was a change in the constitution when two trusts were taken into partnership as per partnership deed dated 25.11.1977 and the share of partners in the reconstituted firm were as under:

Ravjibhai Chandulal 25%
Gandalal Bavalal 20%
Rameshchandra Ravjibhai 25%
Dalsukh Gandalal, trustee of
Parul Trust 15%
Pragjibhai Gandalal, trustee of
Naresh Trust 15%.

It would thus be seen that Shri Ravjibhai surrendered 20% share and Rameshchandra Ravjibhai surrendered 10% share in favour of the two trusts taken into partnership on reconstitution.

The firm was again reconstituted on 1.11.1978 where Maheshkumar Ravjibhai (minor) was admitted to benefit of partnership and the shares of partners in the reconstituted firm were as under:

Shri Ravjibhai Chhaganlal 20%
Shri Gandalal Bavalal 10%
Shri Rameshbhai Ravjibhai 20%
Shri Dalsukhbhai Gandalal, trustee
of Parul Trust 15%

Shri Pragjibhai Gandalal, trustee
of Naresh trust 15%
Shri Maheshkumar Ravjibhai (Minor) 20%.

It would be seen from the above constitution that S/Shri Ravjibhai, Gandalal and Rameshchandra relinquished share to the extent of 5%, 10% and 5% in favour of the new partners admitted to benefits of partnership respectively. The Assessing Officer held that relinquishment of right in share of profit is a deemed gift.

On appeal it was claimed that the new partners brought capital to the partnership as under:

Parul Trust 40,000
Naresh Trust 40,000
Maheshkumar Ravjibhai 1,25,000

It was also claimed that as per the terms of partnership Shri Gandalal Bavalal was not entitled to any benefit in the goodwill and the position being so he could gift away anything to the third person. It was also claimed that the incoming partners thus either contributed capital or agreed to work actively for the firm and that would constitute adequate consideration for the benefits of partnership.

Ultimately in appeal, the Tribunal upheld the finding of the Commissioner of Gift Tax and held that both the trusts and Shri Maheshkumar contributed capital in the firm and they also agreed to share losses and this establishes the fact that the aforementioned three continuing partners relinquished right in share of benefits of the firm in consideration of capital contribution by the incoming partners and therefore there was no gift.

4. Mr. Manish R. Bhatt, learned standing counsel for the revenue has drawn our attention to the decision of the Supreme Court in the case of Commissioner of Gift-Tax, Gujarat v. Chhotalal Mohanlal, (1987) 166 ITR 124 and contended that on introduction of minor Mahesh Ravjibhai, son of existing partner Ravjibhai, the latter relinquished a part of share in favour of his son and therefore there was relinquishment of share of Ravjibhai in the partnership firm.

5. Apart farm the aforesaid decision in Chhotalal Mohanlal (supra), our attention is also drawn to the latest decision of the Apex Court in Sree Narayana

Chandrika Trust v. Commissioner of Gift-tax (2003) 261 ITR 279 wherein the Apex Court has referred to all its previous decisions on the controversy and has held that when the incoming partner brings any contribution towards the capital of the firm, the said fact together with the obligations undertaken by the incoming partners of sincerely and faithfully carrying on the business for the common advantage of the firm was adequate consideration for reallocating the share of the profits. The Apex Court has also held that even if there is a managing partner or administrative partner, it is a matter of convenience. The Apex Court has held in the aforesaid decision that obligations to sincerely and faithfully carrying on business for the common advantage of the firm is an obligation arising out of the partnership and also ordinarily under the partnership deed in almost every case. Hence when the incoming partner makes contribution towards capital such capital together with such obligation of sincerely and faithfully carrying on business for the common advantage of the firm is adequate consideration for reallocating of the shares of the profits of the firm.

6. In view of the finding given by he Tribunal that incoming partners brought in capital to the partnership i.e., Parul Trust Rs.40,00, Naresh Trust Rs.40,000 and Maheshkumar Ravjibhai RS.1,25,00 and in view of the aforesaid obligations of the incoming partners of sincerely and faithfully carrying on the business for the common advantage of the firm, there was adequate consideration and therefore the Tribunal rightly held that there was no gift.

7. As regards reliance placed on Chhotalal's case (supra) that was a case of minors who were admitted to the benefit of partnership firm without bringing in any capital and the share of the existing partner, who was the father of the newly admitted partners, was reduced and therefore the Court held in the facts of that case that there was a deemed gift by the father in favour of his minor sons. In view of the finding recorded by the Tribunal that incoming partners had brought in capital the ratio in Chhotalal 's case (supra) cannot apply to the facts of the present case.

8. In view of the above discussion, we answer the common question in all the three references in the affirmative i.e., in favour of the assessee and against the revenue.

The references stand disposed of accordingly.

(M.S. Shah, J.) (A.M. Kapadia, J.)

(karan)